Cause No. 48923-6-II

WASHINGTON STATE COURT OF APPEALS

DIVISION II

ADRIAN CONTRERAS-REBOLLAR,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

STATEMENT OF ADDITIONAL GROUNDS

ADRIAN CONTRERAS-REBOLLAR
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3. Was appellant sentenced to the Constitutional prohibition against ex post facto laws?
4. Are the laws appellant challenges unconstitutional pursuant to the arguments raised herein?

II. ARGUMENT & AUTHORITIES

A. The trial court again lacked jurisdiction to resentence appellant on 4-21-16, as it lacked the authority per RAP 7.2, and did not get permission from the COA, when it chose to correct its own mistakes and carry out that resentence on its own.

On Dec., 7, 2015, appellant filed his originating PRP concerning this matter. On 4-21-16 he was resentenced. In its response filed 5-2-16, the state argued:

1. The State agrees that petitioner's J&S was entered without jurisdiction and has corrected the issue. (p.3 of State's Response to PRP)

2. Must petition be dismissed where State agrees that petitioner's 2013 J&S was entered without jurisdiction and has corrected the issue, thus resolving the issue in petitioner's first claim? (p.1 of State's Response to PRP)

3. Must the petition be dismissed where petitioner's 2nd and 3rd claims are moot in light of resentencing & entry of new J&S? (p.1 of State's Response to PRP)

On p.5 of State's Response to PRP (AP-A), the State clearly acknowledges its limited capacity per the Rules of Appellate Procedure **(RAP 7.2)** to fix its own errors & to the limited authority of a trial court once review in the State COA has been timely initiated. However, the Pierce County Prosecutor's Office feels they are above the law and still chooses & chose to overlook said parameters.

On 5-4-16, the COA agreed with the Pirce Co. Prosecutor's Attny. Office & simply dismissed appellant's PRP. As the State (via the Prosecutor's Office) fixed its own errors the COA decided to terminate review. In which thereafter, the prosecuting office sought to collect a "Cost Bill" from appellant due to the COA termination of review. Even though this was a State created error which the trial court committed, and the State thereafter agreed thereto.

On p.2 of this, "Order Dismissing Petition" the COA indicated only: "The State scheduled another resentencing hearing for 4-21-16." There was no new mandate issued & the COA simply, & essentially, allowed the Pierce Co. Prosecutor's Office to get away with correcting its own mistakes &, thereafter agreed with the same to dismiss petitioner's PRP.

It did not specify in what manner the "state" was allowed to reschedule the 4-21-16 resentencing hearing and, thereby appellant can only assume it was through the same Pierce Co. Attny. Office tactics which were used on/concerning the 3-13-13 resentencing hearing in question.

And not, per **RAP 7.2(e)(2)** proscribed/proper manner, in which the trial court is said to follow concerning the trial court's need of asking permission from/of the reviewing/"appellate" Court when trying to correct an error currently & actively being reviewed by the Appellate Court.

The reason why appellant uses this term, "tactics" is because essentially, that's what they are. In the past, appellant has had problems with said action as it deprives him

of his typewriter & other legal property/documents, which he is (and may be) using to timely & properly pursue other rights and/or avenues to the appeal process. In the past (AP-B) appellant was actively seeking to file his "Petition for Disc. Review" with the WA. Supreme Court, when he was sent back (with no forewarning) to the trial court for his restitution hearing. The process itself from DOC-to County-and back, within itself takes 2 months. Mainly done while awaiting at the "Transport" facility in Shelton WA., awaiting to be sent back to his main institution from where he came, while DOC confirms all court matters are done. Which is 2 months he is without any of his belongings, which are stored back at his main facility's Property Room. Which of course do him no good while he's in County, and awaiting transfer back-to. None, of these considerations are taken by the Pierce Co. Pros. Office when they are given the free discretion to simply re-schedule a Sentencing Order, which a trial ct. simply signs, then transfer said document to WA. DOC HQ. in Olympia asking for "OT" Offender To Court order, which of course DOC (also) simply signs.

Appellant asserts that what the Pierce Co. Pros. Office has been getting away with doing, has been doing, & is doing is a "tactic" performed outside of the proscribed parameters to wit--**RAP 7.2; CrR 7.8**--to deprive appellant of his legal property and instruments to curtail his ability--with no forewarning--to curtail his other avenues of appeal, as to the appeal process.

At the present (resentence), as well as during his last resentence (scheduled by the Pros. Attny. Office & not via

a COA mandate) appellant has an active U.S. District Court appeal pending. Which, when the state is simply allowed to schedule their own Scheduling order/"TO/Transport Order" for an appellant currently on appeal to be pulled out of DOC to simply correct their own mistake(s) currently on review--it is a "tactic" which is outside of the proscribed parameters set by both **CrR 7.8; RAP 7.2,** and deprives appellant of most if not all of his legal pleadings. To wit--WA. DOC Policy (statewide) only allows legal documents "pertaining to" the current matter for transport back to County Jail be allowed to the offender. Which is rigorously enforced as appellant was once unallowed to take diplomas of completed classes (even though he was going back to Court for a resentence) while in DOC as they (the diplomas) were deemed "unofficial" legal documents. Even though he was going back to court for a resentencing hearing.

This is problematic to appellant, though clearly not to the state & Pros. Attny. Office.

These (aforementioned) meassures are implemented so that there is a check-and-balance system so that trial courts cannot simply correct an error that they (themselves may have created) created, on their own terms, and, to instead, allow the wheels of proper justice to turn.

Because the Pierce Co. Pros. Attny. Office feels they are above the law, and thus, proscribed methods of the Rules of Appellate Procedure/RAP. They feel they are entitled to simply create these errors & fix them at their own random will.

Which is not, according to **CrR 7.8; RAP 7.2(e);** State v.

Friedlund, 182 Wn.2d 388, 396, 341 P.3d 280 (2015), how things work. This is not the 1st, but 2nd time, in which these inadequate, unforseen, & untimely rescheduling orders made by the Pierce Co. Pros. Attny. Office has costed appellant to go over his Court appointed deadlines, with the WA. Supreme Court concerning, otherwise, timely review of mistakes being created & perpetuated by the Pierce Co. trial court.

Both, during appellant's 1st resentence, as well as during his 4th resentence of, 3-1-13, which he argued was entered without jurisdiction, which the state agreed, he was deprived of all of his legal property, when he was transported back on a chain-bus back to County Jail, with no forewarning whatsoever, as no ruling, or "Clerk Action" order was issued by the Appellate Court, from the WA. DOC facility, back into the much more restrictive setting of a county jail. This has costed the defendant, 2 timely WA. Supreme Court deadlines in the past. Not to mention, he now has a WA. District Court appeal pending as well. Due to the filing of this SAG, who knows? Maybe, this time it may cost him to go over his Western District Court (federal appeal) deadline? Per the current tempo, appellant's case has been having--ONLY the Pierce Co. Prosecutor's Office knows.

This is not correct, nor is it, the proscribed proper manner by which **RAP 7.2(e)** proscribes the state & therefore, the various Prosecuting Attny. Offices and/or the trial courts, in the state, to correct certain errors being actively reviewed by and in, the Appellate Court.

This Pierce Co. process, and quite possibly, the process in/by which various Superior County Courts have been allowed to simply--by way of scheduling orders, correct their own, self-created mistakes, which are currently & actively being reviewed in the Appellate Courts, not to mention, by simply sidestepping the proscribed method of doing so--to wit **RAP 7.2(e)**--creates a 'wild-wild-west' situation, of 1.) no proscribed law; 2.) a correction of errors at random will process; 3.) not only has the potential, but does have a method of derailing & curtailing other law mandated, and proscribed methods for/of proper appellate review.

If the state would only follow the proscribed procedure, not only as a reference point, but mandated, by as per **RAP 7.2 (e)**--upon the filing of those/these proper motions by the state, at the very least, it will offer appellant(s), the proper time, (in which, in case of other active appeals; petitions; and/or motions pertaining to the state appeal procedure may be pending) at least following the proscribed method, the appellant will have enough time to file a 'Motion for Extension' to said/those appellate courts that--especially a pro se petitioner/appellant--will need more than the normally necessary time/extension as he may well be headed back to County Jail (not to mention transporting facility to-and-from) for whatever scheduling order/hearing the state is requesting.

Without, that method, the pro se appellant is simply & in the middle of the pursuit of his appellate Justice--told on any given day by DOC officers to: "Pack your stuff up (in boxes) you

are leaving somewhere where we don't know & we can't tell you, on the chain." In other words, "you are only allowed 2 manilla envelopes of legal documents, which can only be pertaining to what you are being sent back for--everything else, and other legal documents pertaining to other appeals, need to stay in these boxes here in our DOC Property Room, where you will have no access to."

This is wrong for many reasons, not to mention, this is not even the proper & more just method prescribed per both the law & RAP 7.2. As noted above, **CrR 7.8 & RAP 7.2(e)** limit the superior court's authority to modify a criminal judgement. RAP 7.2(e) explicitly requires the superior court to obtain permission from the appellate court before making any determination that would, (as here) "change a decision being reviewed by the appellate court." Quoting State v. Friedlund, 182 Wn.2d 388, 396, 341 P.3d 280 (2015).

B. Appellant next cites an abuse of discretion by the trial court Judge when he failed to accept the premises of CJC Cannon 3(D)(1)(a).

The undisputed facts of this case is that: appellant has appeared 5-6 times for resentencing before the trial court Judge in question, not counting the orig. sentencing hearing held before it on 2-16-07.

There has been many disputed facts on the case, which the COA has remanded appellant on. The 1st remand was due to the trial court in question, having allowed the violation of both basic & fundamental rights of the appellant to wit--establishing proper proof & procuring the proper documents to establish the

defendant's/appellant's criminal history. Not to mention, the proper proof from the DOC concerning Mr.Contreras' community custody status at the time of the offense, from which this appeal arises. (AP-C, 1st COA decision concerning remand)

Appellant's counsel filed a "Motion For New Sentencing Judge Based On Appearance Of Fairness Violation". (AP-D) Appellant asserts that: due to the history of the case (concerning the various remands); the facts & legal arguments presented on the aforementioned motion; due to the legal argument & authorities presented herein--this Court should find abuse of discretion by the trial court in refusing to recuse itself from appellant's case & should further find a violation of the "appearance of Fairness" doctrine.

The appearance of fairness doctrine derives from the **U.S. CONST. Amend. XIV; "Due Process Clause"**; and **WA. CONST. Art. 1, § 3**, which states, "No person shall be deprived of life, liberty, or property, without due process of law."

Formally, caselaw points to a defendant being able to show facts outside the record to substantiate a judicial bias claim, however, because state law limits the scope of review to the record, the 'rule of leniety' should apply, concerning the ambiguity concerning concerning the caselaws in WA. State, which speak to 1.) the limited scope of review, 2.) the necessary proof (which is normally found outside the trial record/Report of Proceedings0 to ascertain a claim of judicial bias. Thus, appellant urges this Court to rule concerning the other avenues of a/the judicial bias claim to wit--the "appearance of fairness"

doctrine.

The disputed facts of this case, and the argument made by appellant's counsel, reflect that the trial court engaged in ex parte communications with the prosecution concerning the disputed facts. There is no reason, whatsoever, non discernable from the record as to why, although the trial court had asked for both parties to provide appellate documents to clarify the procedural history of the case, (which supposing he could've conferred with defendant's counsel for thus, the state will likely be doing the same, in asking for reclusal when in doubt) 1.)it effected this in manner of unecessary hastiness--which further shows the "rubber stamp" argument defendant's counsel made concerning the deliberate indifference by which the trial court had acted in/throughout the history of appellant's case/former rsentencing hearings, (RP 4/14/16 p.4 at 14-25) 2.) There is no discernable reason as to why the trial court judge will simply hang around when these documents were being procured by the prosecution (RP 4-15-16 p.10 at 13) which could have & should have easily been able to be handed down and presented to the trial court Clerk--as opposed to the tribunal itself; 3.) and, the record will not be able to show what exactly was said or transpired during these ex parte communications had between the tribunal & the Pros Attny. Office.

As mentioned above, the prosecution was only supposed to be there to hand over documents to the Clerk.

Thus, further raising the "Bone-Club" rule concerning WA. State Court room closure found in State v. Smith, 181 Wn.2d 503,

334 P.3d 1049(2014). Which appellant asserts, is what happened here--concerning the ex parte communications had between the tribunal & the prosecution Ms. Miller. There was a courtroom closure which according to State v. Smith, can be brought up for the first time on appeal, whether, it was objected to at trial or not. Smith, 181 Wn.2d 508 (2014). Sentencing and thus, resentencing (which is what the COA remand was for) is a major stage of the crim. proceedure in which defendant is entitled to certain fundamental rights--such as the right to representation, and, appellant asserts, the right to the open administration of justice.

"WA. State is one of a number of states whose constitutions (unlike the U.S. Const.) explicitly guarantee the open administration of justice. Art. 1, § 10 of our constitution commands, "justice in all cases be administered openly, and without unnecessary delay." The special emphasis on open court proceedings renders the WA. Constitution arguably more stringent than its federal counterpart, and our court's decisions have consistently emphasized the value of open administration of justice." Smith, 181 Wn.2d, at 524.

'The appearance of bias or prejudice can be as damaging to public confidence in the administration of justice as would be the actual presence of bias or prejudice." State v. Madry, 8 Wn. App. 61, 69-70, 504 P.2d 1156 (1972). "The critical concern is determining whether a proceeding appears to be fair is how it would appear to a reasonable & disinterested person." Chi., Milwaukee, St. Paul. & P.R.R. v. State Human Rights Commin, 87 Wn.2d 802, 810, 557 P.2d 307 (1976).

Appellant request this Court to rule on the "critical" concern mandated by the WA. Supreme Court decision in Chi., Milwaukee, St. Paul. & P.R.R v. State, 87 Wn.2d at 810.

Here, Culpepper only gave an oral decision as oppossed to a wr-iten decision which could have lead to a more concise explanat-ion against the ex parte communications had and/or could've led to actual bias--as the motion to reclusal filed in the superior court addressed communications--which could have posed a bias as to whether appellant is/was on community custody.

Appellant asserts, that the tribunal should have not been around when Ms.Miller from prosecution was dropping off certain documentation, (which alone could've been to ascertain the fact(s) being disputed) said documentation was also, in effect, at the request of the tribunal to ascertain the procedural posture of the case, and, should have not sent personal/email messages to the prosecution, when the **WA. Const Art. 1, § 10,** demands the open administration of justice, not the mention trying to speed the whole process up, as has done so in the previous resentences.

Should the Judge simply have disengaged itself, as soon as a potential ex parte communication was to: 1.) occur; 2.) likely occur, the documents requested would have simply been dropped-off to the Court Clerk as usual, and, instead of asking for clarification <u>from</u> the prosecution itself, concerning the case, the trial court would likely been able to ascertain for itself, the 1.) facts of the case; 2.) the procedural posture/history of the case.

Without said detached posture, appellant asserts that the reviewing Court cannot make up facts which are unsupported by the record--to wit, what the ex parte conversations between the tribunal & the prosecution <u>actually</u> where. As, there is no

record, of said conversations, to do so would be to go against the decisions of, In re. Marriage of Littlefield, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).: "A Court's decision is manifestly unreasonable if it is based on untenable grounds if the factual findings are unsupported by the record."; State v. Rundquist, 79 Wash.App. 786, 793, 905 P.2d 922 (1995)(citing WA. State Bar Association, Washington Appellate Practice Deskbook sec. 18.5 (2d ed. 1993) "A Court's decision is manifestly unreasonable if it is outside the range of acceptable choices given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect ground."

Lastly, the "Law of the Case Doctrine"-The principle which holds that any legal (lawful) decision by an appellate court is binding (or controlling) upon all subsequent proceedings in the case, is pertinent here, concerning those decisions found in, State v. Sherman, 128 Wn.2d 164, 206, 905 P.2d 355 (1995).

There, the WA. Supreme Court found several points, pertinent to appellant's case: 1.) no prejudice on account of ex parte communication (in deciding recusal matters) actual prejudice is not the standard. Sherman, 128 Wn.2d at 206.

The CJC recognizes that where a trial judge's decisions are tainted by even a mere suspicion of partiality, the effect of the public's confidence in our judicial system can be debilitating. The CJC provides in relevant part: "Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned..." CJC Cannon 3(c)(1), Sherman, 128 Wn.2d at 206.

Concerning the public's confidence & the debilitating thereof, in the instant case, appellant has been resentenced 5-6 times, to include his original sentence hearing, at the culmination of the 4-12-16 resentencing hearing, a heavy burden rested on the trial court, yet again, therefore, adding

the ex parte communications on top of all this, this Court should find it easy to say the public's confidence in the judicial system in appellant's case can be easily questioned, not to mention, it has suffered a debilitating effect therefrom.

The Sherman Court also found that the safest course is to remand the matter to another judge. Sherman, 128 Wn.2d at 206. The test for determining whether the judge's impartiality might reasonably be questioned is an objective one/test that assumes that "a reasonable person knows and understands all the relevant facts." Sherman, 128 Wn.2d at 206 (quoting In re Drexel Burnham Lambert Inc., 861 F.2d 1307, 1313 (2d Cir. 1988), Cert denied, 490 U.S. 1102, 109 S.Ct. 2458, 104 L.Ed.2d 1012 (1989).

As in Sherman, here, by contacting the prosecution on a hotly debated issue, which has been under long debate (10 yrs) about (whatever) was said in the RP, the trial judge may have inadvertently obtained information critical to a central issue on remand, namely, whether Mr. Contreras was in fact on comm. custody. Given the facts appellant has raised in this brief, a reasonable person might question his impartiality.

Due Process, appearance of fairness & Cannon 3(D)(1) of the CDJ require a judge to recuse himself where there is bias against a party or where impartiality can be questioned. The test for whether a J. should disqualify himself where his impartiality might reasonably be questioned is an objective one. State v. Leon, 159 Wn.2d 1022, 157 P.3d 404 (2007) LEXIS 228 (2007)(cithing State v. Sherman, 128 Wn.2d 164, 206, 905 P.2d 355 (1995).

C. Appellant asserts he was sentenced to a CONST. prohibition against ex post facto laws.

Appellant cites State v. Coombes, 191 Wn.App. 241, 361 P.3d 270 (2015)., for this argument. Appellant argues the trial court's application of RCW 9,94A.701 is constitutionally impermissible as a violation of the prohibition on ex post facto laws because the law in effect when he committed the crime called for a 24-48 month range of Community (Comm.) custody.

The SRA provides that any sentence imposed under its authority must be in accordance with the law in effect when an offense is committed. RCW 9.94A.345; Wash. Rev. Code §10.01.040 provides that whenever any crim. or penal statute shall be amended or repealed, all offenses committed while it is in force shall be punished or enforced as if it is is force, notwithstanding such amendment or repeal, unless a contrary intention is expressly declared in an amendatory or repealing act.

As in State v. Coombes, 191 Wn.App. at 250, appellant argues that the trial court's application of RCW 9.94A.701 is constitutionally impermissible as a violation of the prohibition on ex post facto laws because the law in effect when he committed the crime called for a 24-48 month range of Comm. custody.

This Court reviews de novo alleged violations of the prohibition of ex post facto laws. State v. Pillatos, 159 Wn.2d 459, 469, 474-77, 150 P.3d 1130 (2007).

Both the U.S. & WA. Constitutions prohibit ex post facto laws. U.S. CONST. art. 1, § 10;WA. CONST. art. 1, § 23. The State violates the prohibition on ex post facto laws when it imposes punishment for conduct that was not punishable when

committed or when it increases the quantum of punishment. In re Pers. Restraint of Flint, 174 Wn.2d 539, 545, 277 P.3d 657 (2012).

Mr.Contreras must show that the law he is challenging (1) is operating retroactively and (2) increases the quantum of punishment from the level he was subject to on the date of the crime. id. Flint, 174 Wn.2d at 545.

First, RCW 9.94A.701 by its own terms operates retroactively. As for the 2nd prong, the applicable quantum of punishment increases when a statute makes a formerly discretionary punishment mandatory. Lindsey v. Washington, 301 U.S. 397, 401-02, 57 S.Ct. 797, 81 L.Ed. 1182 (1937).

Here, Mr.Contreras committed the offense in early 2006, the SRA imposed discretionary range of Comm. custody of 24-48 months. See former RCW 9.94A.715(1); former WAC 437-20-010 (2000)(listing the Comm. custody range for serious violent offenses as 24 to 48 months). The legislature repealed RCW 9.94A.715 in 2008 and added RCW 9.94A.701, which maintained the language of RCW 9.94A.715. Then, in 2009, the legislature amended former RCW 9.94A.701 by removing the language permitting variable terms of Comm. custody. **Laws of 2009, ch. 375, § 5.** The legislature replaced the variable terms with fixed terms of 36, 18, or 12 months of Comm. custody, depending on the type of offense. RCW 9.94A.701(1)-(3); Coombes, 191 Wn.App at 253.

For Mr.Contreras' offense, the comm. custody term is 36 months under the amended statute. RCW 9.94A.701(1)(b). Per Lindsey v. Washington, 301 U.S. 397, 401-02, 57 S.Ct. 797, 81 L.Ed. 1182(1937); Coombes, 191 Wn.App. at 241; 252-53., the

new Comm. custody law increased the punishment because it changed a previously discretionary term to a mandatory term. As in State v. Coombes, 191 Wn.App at 241, 252-53, this Court should find that Mr. Contreras has satisfied both prongs for establishing an unconstitutional ex post facto law, and vacate the Comm. custody portion of Mr. Contreras' sentence and remand for imposition of a term consistent with the law in effect in 2006.

D. Appellant challenges the unconstitutionality of WA. State's laws & language pertaining to the application of his 2004 conviction of Asslt. 3rd degree, which the trial court used to add an additional point on the sentencing grid for sentencing purposes on his current conviction, and last resentencing hearing held on 4-21-16.

The unconstitutionality of a law is not ripe for review unless the person seeking review is harmed by the part of the law that is alleged to be unconstitutional. State v. Ziegenfuss, 118 Wn.App. 110, 113, 74 P.3d 1205(2003). The same was found to be pertinent in State v. Nguyen, 138 Wn.App. 1042 (2007). In Nguyen, the concern was about multiple 60 day periods of incarceration for community custody (Comm. custody) violations to be premature, (for unconstitutionality challenges) as he had not begun to serve his term of Comm. custody, let alone violate any of his conditions.

Due to WA. State's continuous resort, in trying to dodge and avoid the application of Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004)., pertaining to its use of further punishment in adding an additional point to its "standard range" sentencing grid--which mainly pertains to previous convictions [which is allowed by Blakely]--when a

defendant has been found to be in Comm. Custody at the time of a current offense, appellant is forced to challenge 3 individual premises which he intends to have the Court decide upon best for argument. All 3 challenges rely on the same legal premises however.

(1) I challenge WA. State's interpretation of **RCW** 9A.20.021 in its implementations of **RCW** 9.94A.701, (2) I further challenge the unconstitutionality of former **RCW** 9.94A.505 pertaining to appellant's application of Comm. Custody pertaining to his 2004 conviction of Asslt. 3rd degree, (3) lastly, I challenge the unconstitutionality of the trial court's additional point to his sentencing grid at his last resentencing hearing held on 4-21-16 due to its findings that appellant was on Comm. Custody at the time he committed the offense for which he is being punished.

Pusuant to Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 235 (2000)., "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury..." In the Blakely Court, it was further explained specifically to this state & defined for this state: (2) "for purposes of the **Sixth Amend.**, the 'prescribed statutory maximum' is 'the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." Blakely, 124 S.Ct. at 2537.

The Blakely Court also reasoned, "In Washington, 2nd degree kidnapping is a Class B felony...state law provides that 'no person convicted of a Class B felony shall be punished by

confinement...exceeding...a term of 10 years." § 9A.20 "other provisions of state law, however, further limit the range of sentences a judge may impose. Washington's **SRA** specifies, for petitioner's offense of 2nd degree kidnapping with a firearm, a "standard range" of 49-53 months..." Blakely, 542 U.S. at 299.

Our precedents make clear, however, that the '"statutory maximum'" for Apprendi purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." Blakely, 542 U.S. at 303.

'In other words, the relevant "statutory maximum" is not the maximum sentence [to wit **RCW 9A.20**] a judge may impose after finding additional facts, but the maximum he may impose without any additional findings. Blakely, 542 U.S. at 304.

In which case, per Blakely, in WA. state the statutary maximum is meant pursuant to the "standard range" sentence in **RCW 9.94A.510** and not, **RCW 9A.20.021**. In other words, as this Court properly found in State v. Hochhalter, 131 Wn.App. 506, 518-24, 128 P.3d 104 (2006)., other than the fact of a previous criminal conviction, any [other] fact which increases the punishment for a defendant outside of the "standard range" and pertaining to a defendant's previous criminal convictions, to include whether he was on Comm. Custody at the time of offense must be submitted to the jury. Hochhalter, 131 Wn.App. at 522-24.

Appellant therefore urges this Court to uphold its decisions in Hochhalter, 131 Wn.App. 506, 518-24, (2006).

At appellant's 2004 conviction for Asslt. 3rd degree, which was pre Blakely but not pre Apprendi, the trial court sentenced appellant to the highest allowed per the "standard range" sentencing grid concerning his lack of Cri. history to wit--0 for sentencing purposes. His standard range was (0-3

months) for the crime itself, which was the Asslt. 3rd, and 6 months due to a deadly weapon enhancement. Thus, the maximum allowed per WA. State's standard range sentence was 9 months 6+3=9, which is what that court sentenced him to. (AP-E) However, he was further sentenced to a 12 month sentence of Comm. Custody term. Which, according to Hochhalter, and Blakely, went outside the proscribed "statutory maximum" allowed, and therefore, said sentence is invalid on its face, and therefore, appellant can challenge at any time after the sentence has been rendered and the infirmity on its face has been found. Hochhalter, 131 Wn. App. at 520-25.

Appellant hereby asks the COA to adhere to the holdings in the following cases, along with Hochhalter, concerning his 2004 conviction, which is currently being used to increase the quantum of punishment on his current convictions. And, should be found to be invalid, due to that court having exceed the proscribed "statutory maximum" to wit--the "standard range" per the holdings rendered in Blakely.

"When the combined total of the defendant's Comm. custody term and standard range exceed the statutory maximum term, Div. 3 vacated the sentence & remanded for resentencing. State v. Zavala-Reynoso, 127 Wn.App. 119, 124, 110 P.3d 827 (2005).

RCW 9.94A.505(5), restricts a trial court from imposing a combined term of confinement & Comm. custody that exceeds the statutory maximum. Which per Blakely, has been found to be the standard range to wit **RCW** 9.94A.510., which both Blakely and Apprendi have ruled is to be determined per **RCW** 9.94A.525., "solely". [pertaining to Prev. Crim. convictions only]

Also, "We hold that when a defendant is sentenced to a term of confinement and Comm. custody that has the potential to exceed the statutory maximum for the crime, the appropriate remedy is to remand to the trial court to ammend the sentence." Conclusion of In re Pers. Restraint of Brooks, 166 Wn.2d 664, 675, 211 P.3d 1023 (2009).

Further, concerning the challenge to appelant's 2004 conviction, "Invalid on its face" for purposes of RCW 10.73.090(1)., means that the judgement's infirmities are evident without further elaboration. It is clear by viewing (AP-E) appellant's 2004 J&S, that he was sentenced to the statutory maximum allowed by Blakely, to wit 9 months, and was further sentenced to a 12 month Comm. custody period which exceeded the maximum punishment allowed by both Blakely, and RCW 9.94A.505(5) which was also pertinent at the time. Which is now being used to further punish appellant. As this Court found in Hochhalter, no further elaboration is needed for RCW 10.73.090(1) purposes. Hochhalter, 131 Wn.App. at 506.

Lastly, "because the defendant had already been sentenced to the maximum term of incarceration, the trial court could not impose additional time to/of community custody as it exceeded the "statutory maximum" sentence for the offense." State v. Gamet, 2014 Wash.App. LEXIS 2590, at 37 (2014).

And, in Gamet, the COA decided to remand in order to have the trial court strike the Comm. custody time rendered. Appellant urges the Court to do the same concerning his 2004 conviction.

Blakely was pertinent to appellant's 7-16-04, J&S, as the rendering decision(s) found in Blakely was handed down on 6-24-04.

Pursuant to RCW 10.73.190.(1), this Court's rendering decisions in Hochhalter, as well as the Blakely Court, appellant urges the Court to find his 2004 J&S "Invalid on its face" and

remand to the trial court to strike the 12 month portion of that sentence concerning his community custody.

Appellant next challenges the unconstitutionality of RCW 9.94A.505(5), in its application of RCW 9.94A.701, in its usage of RCW 9A.20.021 as being the statutory maximum a judge is allowed to sentence a criminal defendant.

It is clear, that pursuant to Blakely,: "In other words, the relevant "statutory maximum" is not the maximum sentence [to wit RCW 9A.20] a judge may impose after additional facts, but the maximum he may impose without any additional findings." Blakely, 542 U.S. at 304.

It is clear, that the terms of confinement pertaining to RCW 9A.20.021 et seq., largely pertain to when exigent circumstances has been found concerning the crime, in other words when 'aggravating' factors and/or an exceptional sentence has been rendered by the trial court. And, which Blakely would then come into effect. Blakely, 542 U.S. at 304.

Hence, appellant challenges WA. State's current interpretation of RCW 9.94A.505(5), as unconstitutional pursuant to Blakely as the final refference to RCW 9A.20.021 was found to be an unconstitutional language concerning the "statutory maximum" term allowed in WA. State pursuant to Blakely, 542 U.S. at 304.

Appellant argues he can challenge the unconstitutionality of this law due to the continuous and current harm being inflicted upon appellant due to that part of the laws which he has aforementionaly challenged. Ziegenfuss, 118 Wn.App. 110, 113. to wit--the final reference found in RCW 9.94A.505(5) concerning the statutory maximum [a judge may sentence without additional findings] referencing to RCW 9A.20.021.

Finally, appellant challenges the unconstitutionality of the application of RCW 9.94A.525(19) which is the Offender Score a judge may sentence an offender to, specifically pertaining to wit--whether the offender was on Comm. custody at the time of the current offense and if so, increasing the quantum of punishment which one can be sentenced to wit--the "standard range" of RCW 9.94A.510.

The U.S. Supreme Court has found that "other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." (emphasis ad added) Apprendi, 530 U.S. at 490.

In Blakely, the U.S. Supreme Court, further elaborated and held pertinent here: (1) "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury"; and (2) for purposes of the Sixth Amendment, the "prescribed statutory maximum" is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." Blakely, 542 U.S. at 303-04.

In sum then, the Court held that an accused has a Sixth Amendment right to have the jury find each fact needed to support his or her sentence, except, at least for now, the fact of a prior conviction. Hochhalter, 131 Wn.App.520-22.

Thus, the Court concluded that "whether one convicted of a crime is on community placement at the time of the [current] offense is a factual determination subject to the 6th Amend. requirement that a jury make the determination beyond a reasonable doubt." Hochhalter, 131 Wn.App. at 521 (citing State v. Jones, 126 Wn.App 136, 144, 107 P.3d 755 (2005).

The procedural history of Mr. Contreras-Rebollar's case concerning both the determination, validity, and application of **RCW** 9.94A.525(19), on his 2-21-07 conviction has been a hotly contested debate between the parties involved (RP 5 at 22; RP 6 at 1, both 4-14-16 RP; RP 4-15-16 22 at 17) the WA. DOC has issued "discrepencies" concerning the matter of days appellant actually served while on Comm. custody. (RP 4-21-16 43 at 16-25)

The tribunal itself has had difficulty in properly assesing assessing its calculation and, as appellant has presented, said determination is unconstitutional pursuant to both Apprendi and Blakely.

Where the trial court denied Mr. Contreras-Rebollar his constitutional right to jury trial to determine whether he was on Comm. custody at the relevant time, the trial court simultaneously denied him the requirement of proof beyond a reasonable doubt for U.S. Const. 6th Amend. purposes.

Where the issue of the timing of Comm. custody could not be determined from the fact of the judgment & sentence, the trial court erred when it failed to convene a jury to determine this issue. Hochhalter, 131 Wn.App at 521 (citing Jones, 126 Wn.App. 136, 144, 107 P.3d 755 (2005)

Not only did the trial court fail to convene a jury, or convene a jury thereon, the trial court also failed to advise Mr. Contreras-Rebollar that he had this right to a jury, when it simply [and at the last minute] decide to ascertain for itself that Mr. Contreras-Rebollar was on Comm. custody. The trial court thus failed to obtain any waiver of the right to

jury trial from Mr. Contreras-Rebollar.

In summary, the court & the prosecutor denied Mr. Contreras-Rebollar, his Const. right to have a jury determine whether he was on Comm. custody at the relevant time. Where the issue of Comm. custody was resolved [which is used to increase a defendant's punishment under the SRA] without the quantum of evidence that would be required for a jury verdict, the trial court denied appellant his right to trial by jury.

CONCLUSION

Appellant, respectfully asks this Court to review & rule upon each one of appellant's arguments raised herein, as a way to ascertain to the Pierce Co. Pros. Attny. Office the limitation of its authority pursuant to RAP 7.2(e)(2) concerning "Scheduling Orders" to fix errors currently being reviewed by the COA. And, respectfully, asks the COA to rule on each one of his arguments meticulously raised herein.

DATED: July 1, 2017.

ADRIAN CONTRERAS-REBOLLAR
Pro Se

NO. 48923-6-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION 2

ADRIAN CONTRERAS-REBOLLAR,
Appellant,
v.
STATE OF WASHINGTON,
Respondent,

DECLARATION OF MAILING

I, Contreras-Rebollar, hereby declare:

1. I am over the age of eighteen years and I am competent to testify herein.

2. On the below date, I caused to be placed in the U.S. Mail, first class postage prepaid, 3 envelope(s) addressed to the below-listed individual(s):

Court of Appeals, Div. 2
Clerk/ Mr. Byrne
950 Broadway, Suite 300
Tacoma, WA. 98402-4454

Pierce Co Dep Pros Attny
Michelle Hyer
930 Tacoma Ave. S Rm. 946
Tacoma, WA. 98402-2102

Mary k. High

Attorney

949 Market St. Suite, 334

Tacoma, WA. 98402-3696

3. I am a prisoner confined in the State of Washington Department of Corrections ("DOC"), housed at the Monroe Correctional Complex ("MCC"), P.O. Box 888, Monroe, WA 98272, where I mailed the said envelope(s) in accordance with DOC and MCC Policy 450.100 and 590.500. The said mailing was witnessed by one or more correctional staff. The envelope contained a true and correct copy of the below-listed documents:

1. Declaration of Mailing
2. SAG
3. _____
4. _____
5. _____
6. _____

4. I invoke the "Mail Box Rule" set forth in GR-3.1—the above listed documents are considered filed on the date that I deposited them into DOC's legal mail system.

5. I hereby declare under pain and penalty of perjury, under the laws of State of Washington, that the foregoing declaration is true and accurate to the best of my ability.

DATED this 1st day of July, 2017.

(Print) ADRIAN CONTRERAS-REBOLLAR, *Pro se.*
DOC# 819639, Unit TRU
Monroe Correctional Complex
(Street address)
P.O. Box 888
Monroe, WA 98272

APPENDIX A

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

IN RE THE PERSONAL RESTRAINT PETITION OF: ADRIAN CONTRERAS-REBOLLAR, Petitioner.	NO. 48336-0 STATE'S RESPONSE TO PERSONAL RESTRAINT PETITION

A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

1. Must the petition be dismissed where State agrees that petitioner's 2013 judgment and sentence was entered without jurisdiction and has corrected the issue, thus resolving the issue in petitioner's first claim?

2. Must the petition be dismissed where petitioner's second and third claims are moot in light of the resentencing and entry of the new judgment and sentence?

B. STATUS OF PETITIONER:

Petitioner, ADRIAN CONTRERAS-REBOLLAR, is restrained pursuant to a Judgment and Sentence entered in Pierce County Cause No. 06-1-01643-4. Appendix A (Judgment and Sentence dated March 1, 2013). Petitioner was convicted by a jury of two counts of assault in the first degree and one count of unlawful possession of a firearm in

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930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Main Office: (253) 798-7400

Petitioner filed a direct appeal of his judgment and sentence entered on March 1, 2013. Appendix G (Mandate pertaining to COA No. 44669-3). This Court dismissed the appeal on June 12, 2013 and a mandate issued on August 15, 2013. Appendix G.

Petitioner filed this personal restraint petition on December 7, 2015. Personal Restraint Petition. The State has no information to dispute petitioner's claim of indigency.

C. ARGUMENT:

1. THE STATE AGREES THAT PETITIONER'S JUDGMENT AND SENTENCE WAS ENTERED WITHOUT JURISDICTION AND HAS CORRECTED THE ISSUE.

Personal restraint procedure has its origins in the State's habeas corpus remedy, guaranteed by article 4, section 4 of the State Constitution. Fundamental to the nature of habeas corpus relief is the principle that the writ will not serve as a substitute for appeal. A personal restraint petition, like a petition for a writ of habeas corpus, is not a substitute for an appeal. ***In re Hagler***, 97 Wn.2d 818, 823-24, 650 P.2d 1103 (1982). "Collateral relief undermines the principles of finality of litigation, degrades the prominence of the trial, and sometimes costs society the right to punish admitted offenders." *Id.* (*citing* ***Engle v. Issac***, 456 U.S. 107, 126, 102 S. Ct. 1558, 71 L. Ed. 2d 783 (1982)). These costs are significant and require that collateral relief be limited in state as well as federal courts. *Id.*

Because of the costs and risks involved, there is a time limit in which to file a personal restraint petition. RCW 10.73.090(1) subjects petitions to a one-year statute of limitation. The statute provides:

> No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.

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restraint petition at 10-17. A claim that the trial court lacked jurisdiction to enter the judgment and sentence is not subject to the time bar and thus, always reviewable. RCW 10.73.090. Thus, this Court should review petitioner's claim.

In the present case, after a resentencing hearing in 2010, petitioner filed a second direct appeal and a personal restraint petition in which he later added a supplemental PRP. Appendix D. At that point, the trial court's authority to act in the case was limited pursuant to RAP 7.2. This Court consolidated petitioner's direct appeal, PRP and supplemental PRP, before denying the PRPs and affirming the convictions, but again remanding for resentencing to consider petitioner's community custody status at the time of the charged offenses. Appendix D.

Petitioner petitioned the Supreme Court to review the denial of his PRPs and thus, no mandate was issued by this Court pursuant to RAP 12.5[1]. "A 'mandate' is the written notification by the clerk of the appellate court to the trial court and to the parties of an appellate court decision terminating review." RAP 12.5(a). Because no mandate had yet issued, petitioner's case was still technically under review by the appellate court and the trial court's authority remained limited by RAP 7.2. Despite this, the trial court proceeded with a resentencing hearing and a new judgment and sentence was entered on March 1, 2013. Appendix A. Nobody appears to have been aware of this issue until 2015 when a mandate issued following the Supreme Court's and this Court's denial of petitioner's PRPs. Appendix H (Clerk's Minute Entry 3/1/13); Appendix I (Clerk's Minute Entry 2/20/15); Appendix E; Appendix F. After the January 9, 2015, mandate issued, it appears

[1] "The clerk of the Court of Appeals will issue the mandate for a Court of Appeals decision terminating review upon stipulation of the parties that no motion for reconsideration or petition for review will be filed. In the absence of that stipulation... the clerk will issue the mandate: (1) Thirty (30) days after the decision is filed, unless... (ii) a petition for review to the Supreme Court has been earlier filed..." RAP 12.5(b).

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Tacoma, Washington 98402-2171
Main Office: (253) 798-7400

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint Petition of: ADRIAN CONTRERAS-REBOLLAR, Petitioner.	No. 48336-0-II ORDER GRANTING MOTION TO MODIFY AND WAIVING APPELLATE COSTS

Petitioner filed a motion to modify the commissioner's decision of November 7, 2016. After review, it is hereby

ORDERED that the motion to modify the commissioner's decision of November 7, 2016 is granted; it is further

ORDERED that appellate costs are hereby waived.

IT IS SO ORDERED.

DATED this 9th day of December, 2016.

Bjorgen, C.J.
CHIEF JUDGE

IN THE SUPERIOR COURT FOR PIERCE COUNTY WASHINGTON

State of Washington, Plaintiff vs. ADRIAN CONTRERAS REBOLLAR Defendant	No 06-1-01643-4 **SCHEDULING ORDER**

IT IS HEREBY ORDERED that:

1. The following court dates are set for the defendant:

Hearing Type	Date & Time	Judge/Room
MOTION-APPELLATE COSTS	Friday, Jan 6, 2017 8:30 AM	CDPJ 260

2. [redacted]

3. ☐ DAC; Defendant will be represented by Department of Assigned Counsel.
   ☐ Retained Attorney; Defendant will hire their own attorney or, if indigent, be Screened (interviewed) for Department of Assigned Counsel Appointment.

DATED: 12/28/16

Copy Received:

SEE ORIGINAL
ADRIAN CONTRERAS REBOLLAR, Defendant

SEE ORIGINAL
Attorney for Defendant/Bar #

Ordered By:

SEE ORIGINAL
JUDGE/COMMISSIONER

SEE ORIGINAL
PATRICK COOPER
Prosecuting Attorney/Bar #15190

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. ADRIAN CONTRERAS REBOLLAR, Defendant.	CAUSE NO. 06-1-01643-4 NOTICE OF MOTION TO ADD APPELLATE COSTS

TO: ADRIAN CONTRERAS REBOLLAR, WASHINGTON CORRECTION CENTER, PO BOX 900, SHELTON, WA 98584

AND TO: DEPARTMENT OF ASSIGNED COUNSEL, Attorney for Defendant, 949 MARKE ST, TACOMA, WA 98402

YOU ARE HEREBY GIVEN NOTICE that a Motion for Order Adding Appellate Costs has been set before Criminal Presiding Judge Room #260, of the above-entitled court on Friday, the 6th day of January, 2017, at the hour of 08:30 a.m for MOTION TO ADD APPELLATE COSTS.

Pursuant to CrR8.4 under CR5(b)(1), the defense attorney shall notify his client accordingly.

DATED this 28 day of December, 2016.

MARK LINDQUIST
Pierce County Prosecuting Attorney

By: _____ 14720
PATRICK COOPER
Deputy Prosecuting Attorney
WSB#: 15190

Certificate of Service:
The undersigned certifies that on this day he/she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the defendant c/o his/her attorney or to the attorney of record for the defendant c/o his/her attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

12-28-16 _____
Date Signature

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Main Office: (253) 798-7400

APPENDIX B

9-11-09: Motion granted. The petition for review should be served and filed by not later than October 26, 2009.

Susan L Carlson
Deputy Clerk

2009 SEP 11 AM 8:24
CLERK

FILED
SEP 11 2009
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

82933-1

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
AT DIVISION II

Adrian Contreras-Rebollar,
Appellant/Petitioner,

vs.

State of Washington,
Respondent/Defendant,

CASE No. 35962-6-II

MOTION FOR EXTENSION OF TIME TO FILE

I. IDENTITY OF MOVING PARTY

COMES NOW, Adrian Contreras-Rebollar, pro se, movant in the above captioned cause of action, pursuant to RAP 18.8 asking this Court for the relief as designated in Part II of this motion.

II. STATEMENT OF RELIEF SOUGHT

The movant requests an extension of the time in which to file a Motion For Discretionary Review by The Supreme Court of Washington.

EXHIBIT 23

This request is for a 42 day enlargement, commencing from the time of the previous due date, or otherwise set at the discretion of this court.

III. FACTS RELEVANT TO MOTION

This movant's current court imposed deadline under this cause of action is set for September 14, 2009

Because of the legal complexities within the movant's case and in doing legal research, the movant has to: Order case law from the Washington State Law Library that this Law Library does not have; Limitations as to time allotted for use of the Law Library; and the movant's limited skills in doing legal research and typing. All impedes him in meeting the current deadline.

Other facts this court should consider are as follows:

I, (Movant) was pulled out from CBCC on July 8, 2009 for my transfer to Pierce County Jail for a restitution hearing. During my trip there, and back, I was getting moved around so much I had no access whatsoever to a Law Library and was not apprised of my usual and necessary legal paperwork such as my trial transcripts and Briefs for my preparation of my Discretionary Review Motion.

I have included copies of documents, documenting my stay in WA. Corrections Center waiting for my transfer back to CBCC. As indicated on my pink property inventory sheet, "Record of offender personal property," I was transported from: R-3 D-6, my cell assignment at WCC, to: CBCC on August 18, 2009.

This has prevented me from effectively being able

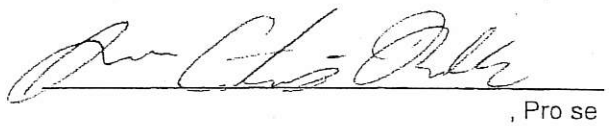
IV. GROUNDS FOR RELIEF AND ARGUMENT

This extension of time will in no way effect the respondent and their ability to argue this case. Therefore, this Court should issue it's ORDER granting this motion.

I declare under penalty of perjury under the laws of the State of Washington, pursuant to RCW 9A372.085, that the foregoing is true and correct.

Submitted this 9th day of September, 2009.

Respectfully submitted,



, Pro se

Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326-9723

APPENDIX C

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ADRIAN CONTRERAS-REBOLLAR, Appellant.	No. 35962-6-II UNPUBLISHED OPINION

PENOYAR, A.C.J. — A jury convicted Adrian Contreras-Rebollar[1] of two counts of first degree assault and returned special verdicts finding that he was armed with a firearm during the commission of those crimes. Contreras now appeals, arguing that (1) the trial court erred by denying his motion for a mistrial; (2) the State did not produce sufficient evidence to prove beyond a reasonable doubt that he was not acting in self defense; and (3) the trial court erred by sentencing him based on a criminal history and offender score the State did not prove. Contreras also argues in a statement of additional grounds for review that he was denied effective assistance of counsel. We affirm Contreras's convictions, but remand for resentencing.

[1] The record indicates that the appellant's full name is "Adrian Contreras-Rebollar." However, we refer to him as "Contreras" throughout this opinion and mean no disrespect in doing so.

Taking the evidence in the light most favorable to the State, a jury could reasonably find that Contreras did not believe that he was about to be injured. First, the jury heard testimony from Rosas that Contreras appeared nervous at her house and that he looked like he was wearing a disguise. Second, Hernandez testified that she heard Contreras say "[t]here those mother fuckers are" before the shooting and "I just dumped on those fools" after the shooting. RP (Jan. 23, 2007) at 289-290. Hernandez also testified that Contreras did not appear afraid at the time of the shooting; rather, he appeared brave, calm, and cool. Third, both Say-Ye and Caber testified that Solis's vehicle's headlights were on. Finally, Solis testified that he traded dope for the rifle and that he thought it was inoperable. In fact, the Washington State Patrol Crime Lab received the rifle without a ram rod and without any wadding, projectiles, and gun powder inside the rifle's chamber or otherwise in a container associated with the rifle. Based on this evidence, the jury had sufficient evidence to reasonably find that Contreras did not act in self defense.

III. SENTENCING

Contreras finally argues that we should reverse his sentence and remand his case for resentencing. We agree and remand this case for resentencing so that the State can produce evidence of Contreras's prior convictions and community custody status.

Fundamental principles of due process require "that in imposing sentence, the facts relied upon by the trial court must have some basis in the record." *State v. Ford*, 137 Wn.2d 472, 482, 973 P.2d 452 (1999) (quoting *State v. Bresolin*, 13 Wn. App. 386, 396, 534 P.2d 1394 (1975)). Although the State bears the burden of proving the existence of prior convictions by a preponderance of the evidence, *State v. Bergstrom*, 162 Wn.2d 87, 93, 169 P.3d 816 (2007), the trial court also has a statutory obligation to ensure that the State properly establishes the

defendant's criminal history. RCW 9.94A.500(1).[8] A certified copy of the prior judgment and sentence is the best evidence to establish a defendant's prior conviction. *Bergstrom*, 162 Wn.2d at 93. When the State alleges the existence of prior convictions and the defendant fails to "specifically object" before the trial court imposes the sentence, the State lacks notice of any apparent defects and the appellate court must remand the case for resentencing. *Bergstrom*, 162 Wn.2d at 93 (quoting *State v. Lopez*, 147 Wn.2d 515, 520, 55 P.3d 609 (2002)). In this situation, the State may introduce new evidence at resentencing. *Bergstrom*, 162 Wn.2d at 93.

Here, Contreras did not "specifically object" to the State's allegations of his prior convictions and community custody status. Instead, he merely declined to sign both the stipulation on prior record and offender score and the judgment and sentence. Because defense counsel signed these documents, the State's allegations went unchallenged. Although the State did not provide evidence at sentencing to support its allegations, it did not have adequate notice of any alleged defect until this appeal, and we remand the case for resentencing.

IV. STATEMENT OF ADDITIONAL GROUNDS

In a statement of additional grounds for review (SAG), Contreras also argues that he received ineffective assistance of counsel because defense counsel (1) failed to propose a

---

[8] RCW 9.94A.500, provides in relevant part:

> (1) Before imposing a sentence upon a defendant, the court shall conduct a sentencing hearing.
>
> . . .
>
> If the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. All of this information shall be part of the record.

APPENDIX D

For client

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff, vs. ADRIAN CONTRERAS REBOLLAR, Defendant.	NO. 06-1-01643-4 MOTION FOR NEW SENTENCING JUDGE BASED ON APPEARANCE OF FAIRNESS VIOLATION

I. Introduction

Deputy Prosecuting Attorney Chelsey Miller met with the court yesterday to "explain" the procedural posture of Mr. Contreras Rebollar's case and provide copies of documents. The posture of this case has been hotly contested. Defense contested the court's jurisdictional ability to resentence Mr. Contreras Rebollar on March 1, 2013 and when the parties were before the court on February 20, 2015 the March 2103 sentence was challenged as invalid. Because it was invalid, the court's actions and findings are in issue and it is the defense position the court needs to make findings based on sufficient evidence regarding defendant's offender score before a valid re-sentencing can take place. Ms. Miller's "explanations" to the Judge go to the heart of Mr.

COPY

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Contreras Rebollar's arguments regarding his resentencing, the meeting with the prosecuting attorney creates an appearance of unfairness that requires Mr. Contreras Rebollar be afforded a new sentencing judge.

II. The Court Should Recuse Itself And Order A New Judge Conduct The Sentencing Hearing Because The Appearance Of Fairness Doctrine Has Been Violated.

The Code of Judicial Conduct governs the rules by which judges must conduct themselves and their courtrooms. The preamble states in pertinent part:

> Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system.
>
> ...
>
> The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. ... The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. ...
>
> The Text of the Canons and Sections is intended to govern conduct of judges and to be binding upon them.
>
> These Canons provide in pertinent part:
>
> Canon 1
>
> An independent and honorable judiciary is indispensable to justice in society. Judges should participate in establishing, maintaining, and enforcing, and should themselves observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this code should be construed and applied to further that objective.
>
> Canon 2

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(A) Judges should respect and comply with the law and should conduct themselves at all time in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(B) Judges should not allow their families, social, or other relationships to influence their judicial conduct or judgment. Judges should not lend the prestige of judicial office to advance the private interests of the judge or others; nor should the judge convey or permit others to convey the impression that they are in a special position to influence them. Judges should not testify voluntarily as character witnesses.

Canon 3

(D) Disqualification

(1) Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances in which:

(a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge previously served as a lawyer or was a material witness in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or such lawyer has been material witness concerning it;

(c) the judge knows that individually or as a fiduciary, the judge has an economic interest in the subject matter in controversy or in a party to the proceeding or is an officer, director, trustee of a party or has any other interest that could be substantially affected by the outcome of the proceeding, unless there is a remittal of disqualification; ...

The essence of what these Canons stand for is found in the appearance of fairness doctrine. It has long been the rule of law in Washington that, "the law goes farther than requiring an impartial judge; it also requires that the judge appear impartial." State v. Madry, 8 Wn. App. 61, 70, 504 P.2d 1156 (1972). Generally the appearance of fairness doctrine requires that the reviewing court inquire as to how the proceedings would appear to a reasonable, prudent and

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disinterested person. Brister v. City Council of Tacoma, 21 Wn. App. 474, 486-87, 619 P.2d 982 (1980).

These principles derive from Offcut v. United States, 348 U.S. 11, 14, 75 S. Ct. 11, 99 L.Ed.11 (1954) in which the Supreme Court held:

> A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the possibility of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered ... But to perform its high function in the best way "justice must satisfy the appearance of fairness."

In Washington, the appearance of fairness doctrine can be violated without any question as to the judge's integrity. In Dimmel v. Campbell , 68 Wn.2d 697, 44 P.2d 1022 (1966), the state Supreme Court held that a trial judge had properly exercised discretion in ordering a new trial when the judge discovered his former partner had expressed a legal opinion as to the conclusion of a trial over which he had presided. The State Supreme Court held:

> We are in complete agreement with the observation made by appellants that the record does not give the slightest hint that the forthright trial judge gave other than an open mind and impartial ear to the case tried before him. Even so, we are not disposed to hold that the trial court abused its discretion in granting respondents a new trial. While we are of the opinion that the cause was impartially decided, the conclusion cannot be escaped that the very existence of the letter beclouded the entire proceeding. It is incumbent upon members of the judiciary to avoid even a cause for suspicion of an irregularity in the discharge of their duties.

Dimmel, 68 Wn.2d at 699.

In State v. Madry, 8 Wn. App. 61, 504 P.2d 1156 (1972), the defendant asserted that the appearance of fairness doctrine had been violated by the court which tried and sentenced him. The courts in Yakima County had conducted an independent investigation into whether prostitution was occurring in a hotel which was managed and leased by the defendant. The

Department of Assigned Counsel
949 Market Street, Suite 334
Tacoma, Washington 98402-3696

defendant had been charged with assault and had defended against the charge by claiming he acted in self defense. The incident did not occur at the hotel investigated by the county's judiciary, nor did the investigation have anything to do with the defendant's case. At sentencing the court utilized some of the information gathered from the independent investigation. On Appeal, Division II reversed the conviction and remanded for a new trial before a visiting judge. In reversing the conviction, the Court held:

> The law goes farther than requiring an impartial judge; it also requires the judge appear to be impartial. Next in importance to rendering a righteous judgment is that it be accomplished in such a manner that it will cause no reasonable questioning of the fairness and impartiality of the judge. A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned.

Madry, 8 Wn. App. at 70.

In this case, defendant should be granted a sentencing hearing before a different judge because the appearance of fairness doctrine was violated when Ms. Miller of the prosecuting attorney's office conferred with the court concerning the very issues the court must decide before sentencing Mr. Contreras-Rebollar, thus violating defendant's constitutional due process guaranty of a fair sentencing by a fair and impartial judge. Here, the defendant does not agree to have a judge who had ex parte communications with opposing counsel hear his argument regarding his position on his offender score and the scope of the court's resentencing power.

Due process requires Judge Culpepper disqualify himself. It is undisputed that Miss Miller had communications with his Honor regarding the very matters scheduled to come before him. (See attached email from Miss Miller to Ms. High). Any reasonable, prudent and disinterested person would view this contact as suspect and, if the court does not recuse itself, believe the proceeding did not appear fair. The entire proceeding is tainted by the ex parte

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contact and the appearance of fairness doctrine will be violated if the Court does not recuse himself from this case.

Respectfully submitted this 15th day of April 2016.

MARY K. HIGH, WSBA# 20123
Attorney for Defendant

Department of Assigned Counsel
949 Market Street, Suite 334
Tacoma, Washington 98402-3696

APPENDIX "E"

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. ADRIAN CONTRERAS Defendant. SID: 20977722 DOB: 03/11/1985	CAUSE NO. 04-1-01908-9 JUDGMENT AND SENTENCE (JS) [ ] Prison [X] Jail One Year or Less [ ] First-Time Offender [ ] SSOSA [ ] DOSA [ ] Breaking The Cycle (BTC)

JUL 15 2004

I. HEARING

SMSH

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 **CURRENT OFFENSE(S)**: The defendant was found guilty on 7/15/04 by [X] plea [ ] jury-verdict [ ] bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	ASSAULT IN THE THIRD DEGREE (E32)	9A.36.031(1)(a) 9.94A.125/9.94A.602 9.94A.310/9.94A.510 9.94A.370/9.94A.530		04/15/04	041060722

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present.

as charged in the Amended Information

[X] A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s) I. RCW 9.94A.602, .510.

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Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

04-9-08412-2

[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 **CRIMINAL HISTORY (RCW 9.94A.525):**

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	Unl Poss Imit CSWID	03/11/03	Pierce Co.	02/05/03	Juv	NV

[ ] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 **SENTENCING DATA:**

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	0	III	1-3 mos.	6 mos DWSE	7-9 mos.	5 yrs.

2.4 [ ] **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence [ ] above [ ] below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney [ ] did [ ] did not recommend a similar sentence.

2.5 **LEGAL FINANCIAL OBLIGATIONS.** The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW. Chapter 379, Section 22, Laws of 2003.

[ ] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

_____

[ ] The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

_____

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [ ] attached [ ] as follows:

_____

_____

_____

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 [ ] The court DISMISSES Counts _____ [ ] The defendant is found NOT GUILTY of Counts

_____

IV. SENTENCE AND ORDER

IT IS ORDERED:

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

04-1-01908-9

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RJN $ 3.02 Restitution to: Mega Foods at 7911 S. Hosmer ST Tacoma, WA

$ _____ Restitution to: _____

(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV $ 500.00 Crime Victim assessment

DNA $ 100.00 DNA Database Fee

PUB $ 100.00 Court-Appointed Attorney Fees and Defense Costs

FRC $ 110.00 Criminal Filing Fee

FCM $ _____ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

$ _____ Other Costs for: _____

$ _____ Other Costs for: _____

$ 813.02 TOTAL

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than $ per DOC per month commencing . upon release. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

4.2 **RESTITUTION**

[ ] The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[ ] shall be set by the prosecutor.

[ ] is scheduled for _____.

[ ] defendant waives any right to be present at any restitution hearing (defendant's initials): _____

[X] RESTITUTION. ~~Order Attached~~ As set above

4.3 **COSTS OF INCARCERATION**

[ ] In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

4.4 **COLLECTION COSTS**

The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

4.5 **INTEREST**

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

4.6 **COSTS ON APPEAL**

An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.

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Telephone: (253) 798-7400

4.7 [ ] HIV TESTING

The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.8 [X] DNA TESTING

The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.9 NO CONTACT

The defendant shall not have contact with _____ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence).

[ ] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.10 OTHER:

No duet / indirect contact w/ vctm / vctm business
Forfeit weapon. Now in property Room.

4.11 BOND IS HEREBY EXONERATED

4.12 JAIL ONE YEAR OR LESS. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the county jail:

3 days/months on Count I _____ days/months on Count _____

_____ days/months on Count _____ _____ days/months on Count _____

A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

6 months on Count No I _____ months on Count No _____

_____ months on Count No _____ _____ months on Count No _____

_____ months on Count No _____ _____ months on Count No _____

Sentence enhancements in Counts I shall run
[ ] concurrent [X] consecutive to each other.
Sentence enhancements in Counts I shall be served
[X] flat time [ ] subject to earned good time credit

Actual number of months of total confinement ordered is: 9 months

[X] CONSECUTIVE/CONCURRENT SENTENCES: RCW 9.94A.589

All counts shall be served concurrently, except for the following which shall be served consecutively:

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Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

The sentence herein shall run consecutively to all felony sentences in other cause numbers that were imposed prior to the commision of the crime(s) being sentenced.

The sentence herein shall run concurrently with felony sentences in other cause numbers that were imposed subsequent to the commission of the crime(s) being sentenced unless otherwise set forth here. [ ] the sentence herein shall fun consecutively to the felony sentence in cause number(s) _____

The sentence herein shall run consecutively to all previously imposed misdemeanor sentences unless otherwise set forth here: _____

Confinement shall commence immediately unless otherwise set forth here: _____

[ ] **PARTIAL CONFINEMENT**. Defendant may serve the sentence, if eligible and approved, in partial confinement in the following programs, subject to the following conditions: _____

[ ] Work Crew RCW 9.94A.135 [ ] Home Detention RCW 9.94A.180, .190

[ ] Work Release RCW 9.94A.180 [ ] BTC Facility

[ ] **CONVERSION OF JAIL CONFINEMENT (Nonviolent and Nonsex Offenses)**. RCW 9.94A.380(3). The county jail is authorized to convert jail confinement to an available county supervised community option and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.

[ ] **ALTERNATIVE CONVERSION**. RCW 9.94A.680. _____ days of total confinement ordered above are hereby converted to _____ hours of community service (8 hours = 1 day, nonviolent offenders only, 30 days maximum) under the supervision of the Department of Corrections (DOC) to be completed on a schedule established by the defendant's community corrections officer but not less than _____ hours per month.

[ ] **Alternatives to total confinement** were not used because of: _____

[ ] criminal history [ ] failure to appear (finding required for nonviolent offenders only) RCW 9.94A.680.

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: _____

91 days

4.13 **COMMUNITY [ ] SUPERVISION / CUSTODY**. RCW 9.94A.505. Defendant shall serve 12 months (up to 12 months) in [ ] community supervision (Offense Pre 7/1/00) or / community custody (Offense Post 6/30/00). Defendant shall report to DOC, 755 Tacoma Ave South, Tacoma, not later than 72 hours after release from custody; and the defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC and shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision or community custody and any other conditions of community supervision or community custody stated in this Judgment and Sentence or other conditions imposed by the court or DOC during community custody. The defendant shall:

[ ] remain in prescribed geographic boundaries specified by the community corrections officer

[ ] notify the community corrections officer of any change in defendant's address or employment

[ ] Cooperate with and sucessfully complete the program known as Breaking The Cycle (BTC)

Other conditions: _____

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946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

The community supervision or community custody imposed by this order shall be served consecutively to any term of community supervision or community custody in any sentence imposed for any other offense, unless otherwise stated. The maximum length of community supervision or community custody pending at any given time shall not exceed 24 months, unless an exceptional sentence is imposed. RCW 9.94A.589.

The conditions of community supervision or community custody shall begin immediately unless otherwise set forth here: _____

4.14 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender' s compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505.

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7602.

5.4 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

5.5 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.6 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. N/A

5.7 **OTHER:** _____

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

04-1-01908-9

DONE in Open Court and in the presence of the defendant this date: 7/15/04

JUDGE
Print name

S. Smith-Amers
Deputy Prosecuting Attorney
Print name:
WSB # 33184

Attorney for Defendant
Print name:
WSB # 6570

Yadira Contreras
Defendant
Print name:

FILED
IN OPEN COURT
CDPJ
JUL 15 2004
Pierce County Clerk
By DEPUTY

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

04-1-01908-9

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 04-1-01908-9

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____.

Clerk of said County and State, by: _____, Deputy Clerk

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

04-1-01908-9

FILED
IN OPEN COURT
CDPJ
JUL 15 2004
Pierce County Clerk
By DEPUTY

IDENTIFICATION OF DEFENDANT

SID No. 20977722 (If no SID take fingerprint card for State Patrol)
Date of Birth 03/11/1985

FBI No. 351068AC2
Local ID No. UNKNOWN

PCN No. 538099635
Other

Alias name, SSN, DOB: Adrian Contreras-Robollar

Race:						Ethnicity:		Sex:	
[ ]	Asian/Pacific Islander	[ ]	Black/African-American	[X]	Caucasian	[X]	Hispanic	[X]	Male
[ ]	Native American	[ ]	Other: :			[ ]	Non-Hispanic	[ ]	Female

FINGERPRINTS

Left four fingers taken simultaneously	Left Thumb
	

Right Thumb	Right four fingers taken simultaneously
	

I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, L. Shipman Dated: 7/15/04

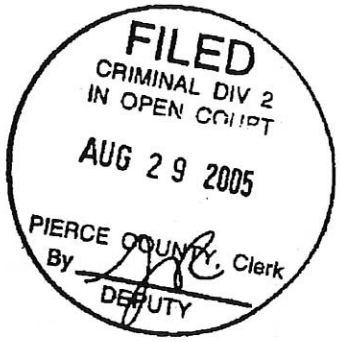
DEFENDANT'S SIGNATURE: [signature]

DEFENDANT'S ADDRESS: _____

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

28338 8/30/2005 00009

05-1-03618-6 23623557 JDSWCJ 08-29-05



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. ADRIAN CONTRERAS-REBOLLAR, Defendant.	CAUSE NO: 05-1-03618-6 WARRANT OF COMMITMENT 1) ☒ County Jail 2) ☐ Dept. of Corrections 3) ☐ Other Custody

AUG 29 2005

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

☒ 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

[ ] 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

04-1-01908-9

[ ] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 7/15/04

By direction of the Honorable

JUDGE

KEVIN STOCK
CLERK

By: _____
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO ~~SHERIFF~~

JUL 15 2004 By Chris Hutton Deputy

FILED
IN OPEN COURT
CDPJ
JUL 15 2004
Pierce County Clerk
By DEPUTY

STATE OF WASHINGTON
ss:
County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____, _____.

KEVIN STOCK, Clerk
By: _____ Deputy

kls

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

06-1-01643-4

FILED
DEPT. 17
IN OPEN COURT
FEB 16 2007
Pierce County Clerk
By _____ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

ADRIAN CONTRERAS-REBOLLAR

Defendant.

SID: WA20977722
DOB: 03/11/85

CAUSE NO. 06-1-01643-4

JUDGMENT AND SENTENCE (FJS)
[X] Prison [ ] RCW 9.94A.712 Prison Confinement
[ ] Jail One Year or Less
[ ] First-Time Offender
[ ] SSOSA
[ ] DOSA
[ ] Breaking The Cycle (BTC)
[ ] Clerk's Action Required, para 4.5 (DOSA), 4.15.2, 5.3, 5.6 and 5.8

JAN 21 2007

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on by [ ] plea [X] jury-verdict [ ] bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	ASSAULT IN THE FIRST DEGREE (E23)	9A.36.011(1)(a) 9.41.010 9.94a.310/9.94A.510 9.94A.370/9.94A.530	FASE	04/12/06	061200028
II	ASSAULT IN THE FIRST DEGREE (E23)	9A.36.011(1)(a) 9.41.010 9.94a.310/9.94A.510 9.94A.370/9.94A.530	FASE	04/12/06	061200028
III	UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND DEGREE	9.41.010(12) 9.41.040(2)(a)(i)	NONE	04/12/06	061200028

07-9-02172-7

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, See RCW 9.94A.533(8).

as charged in the Original Information

[X] A special verdict/finding for use of firearm was returned on Count(s) I, II RCW 9.94A.602, .510.
[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	UPIMCSWID	03/11/03		02/05/03	Juv	NV
* 2	ASLT 3	07/15/04	Pierce Co.	04/15/04	A	NV
3	UPOF 2	08/29/05	Pierce Co.	07/21/05	A	NV

[ ] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

* 1 additional point included on Counts I + II s/c Def. on comm. custody at time of present offense date.

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	~~3~~ 4.5	XII	~~120-160~~ MOS. 129-171	60 MOS.	~~180-220~~ MOS. 189-231	LIFE
II	0	XII	93-123 MOS.	60 MOS.	153-183 MOS.	LIFE
III	4.5	III	~~12+-16~~ MOS. 17-22	NONE	12+-16 MOS.	5 YRS.

2.4 [ ] EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence [ ] above [ ] below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney [ ] did [ ] did not recommend a similar sentence.

2.5 LEGAL FINANCIAL OBLIGATIONS. The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW. Chapter 379, Section 22, Laws of 2003.

[ ] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

_____

[ ] The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

_____

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [ ] attached [ ] as follows:

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 [ ] The court DISMISSES Counts _____ [ ] The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RJN $ LOC Restitution to: _____

$ _____ Restitution to: _____

(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV $ 500.00 Crime Victim assessment

DNA $ 100.00 DNA Database Fee

PUB $ 1,500 Court-Appointed Attorney Fees and Defense Costs

FRC $ 200.00 Criminal Filing Fee

FCM $ _____ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

$ _____ Other Costs for: _____

$ _____ Other Costs for: _____

$ 2,300 TOTAL

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than $_____ per month commencing _____. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

4.2 RESTITUTION

[X] The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[ ] shall be set by the prosecutor.

[X] is scheduled for _____.

[ ] defendant waives any right to be present at any restitution hearing (defendant's initials): _____

[ ] RESTITUTION. Order Attached

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4.3 **COSTS OF INCARCERATION**

[ ] In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

4.4 **COLLECTION COSTS**

The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

4.5 **INTEREST**

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

4.6 **COSTS ON APPEAL**

An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.

4.7 [ ] **HIV TESTING**

The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.8 [X] **DNA TESTING**

The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.9 **NO CONTACT**

The defendant shall not have contact with Nick Solis (12-22-83) Alicia Kelly (8-30-87) (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life ~~years~~ (not to exceed the maximum statutory sentence).

[ ] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.10 **OTHER:**

4.11 **BOND IS HEREBY EXONERATED**

4.12 **CONFINEMENT OVER ONE YEAR.** The defendant is sentenced as follows:

(a) **CONFINEMENT.** RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

150 months on Count I _____ months on Count _____

110 months on Count II _____ months on Count _____

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20 months on Count III _____ months on Count _____

A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

60 months on Count No I _____ months on Count No _____

60 months on Count No II _____ months on Count No _____

_____ months on Count No _____ _____ months on Count No _____

Sentence enhancements in Counts I + II shall run

[ ] concurrent [X] consecutive to each other.

Sentence enhancements in Counts I + II shall be served

[X] flat time [ ] subject to earned good time credit

Actual number of months of total confinement ordered is: 380 months

(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

[ ] The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: I + II

The sentence herein shall run consecutively to all felony sentences in other cause numbers prior to the commission of the crime(s) being sentenced. _____

Confinement shall commence immediately unless otherwise set forth here: _____

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 3/10/06

4.13 [ ] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count _____ for _____ months;

Count _____ for _____ months;

Count _____ for _____ months;

[ ] COMMUNITY CUSTODY is ordered as follows:

Count I for a range from: 24 to 48 Months;

Count II for a range from: 24 to 48 Months;

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Count III for a range from: NA to _____ Months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A for community placement offenses -- serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense -- RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

PROVIDED: That under no circumstances shall the combined term of confinement and term of community custody actually served exceed the statutory maximum for each offense

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

☒ The defendant shall not consume any alcohol.

☒ Defendant shall have no contact with: (See paragraph 4.9)

☒ Defendant shall remain ☒ within [ ] outside of a specified geographical boundary, to wit: Per CCO.

☒ The defendant shall participate in the following crime-related treatment or counseling services: Per CCO.

[ ] The defendant shall undergo an evaluation for treatment for [ ] domestic violence [ ] substance abuse [ ] mental health [ ] anger management and fully comply with all recommended treatment.

☒ The defendant shall comply with the following crime-related prohibitions: See Appendix F.

Other conditions may be imposed by the court or DOC during community custody, or are set forth here:

4.14 [ ] **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.13.

4.15 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections:

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V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505.

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7602.

5.4 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

5.5 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.6 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. N/A

5.7 **RESTITUTION AMENDENTS.** The portion of the sentence regarding restitution may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime.

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5.8 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 2.16.07

JUDGE
Print name Ronald Culpepper

Deputy Prosecuting Attorney
Print name: GREGORY L. GREER
WSB # 22936

Attorney for Defendant
Print name: James Schoenberger
WSB # 33603

FILED
DEPT. 17
IN OPEN COURT
FEB 16 2007
Pierce County Clerk
By _____ DEPUTY

Defendant
Print name: Adrian Contreras Rebollar

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: _____

Defendant signed RFC 2/16/2007

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CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 06-1-01643-4

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____.

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF COURT REPORTER

Karla Johnson

Court Reporter

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

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APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

____ sex offense
__X__ serious violent offense
____ assault in the second degree
____ any crime where the defendant or an accomplice was armed with a deadly weapon
____ any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed;

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC;

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

__X__ (I) The offender shall remain within, or outside of, a specified geographical boundary: Per CCO.

__X__ (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: See paragraph 4.9

__X__ (III) The offender shall participate in crime-related treatment or counseling services;

__X__ (IV) The offender shall not consume alcohol;

____ (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

__X__ (VI) The offender shall comply with any crime-related prohibitions.

____ (VII) Other: _____

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IDENTIFICATION OF DEFENDANT

SID No. WA20977722 (If no SID take fingerprint card for State Patrol) Date of Birth 03/11/85

FBI No. 351068AC2 Local ID No. UNKNOWN

PCN No. 538731871 Other

Alias name, SSN, DOB: ADRIAN CONTRERAS; ADRIAN CONTRERAS REBOLLAR; ADRIAN A. CONTRERAS REBOLLER

Race:						Ethnicity:		Sex:	
[ ]	Asian/Pacific Islander	[ ]	Black/African-American	[X]	Caucasian	[X]	Hispanic	[X]	Male
[ ]	Native American	[ ]	Other: :			[ ]	Non-Hispanic	[ ]	Female

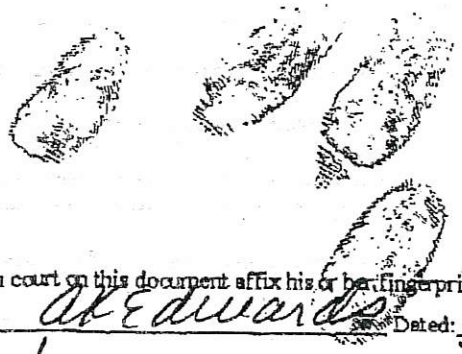
FINGERPRINTS

RIGHT Left four fingers taken simultaneously

~~Left Thumb~~ RIGHT

~~Right Thumb~~ LEFT

~~Right four fingers taken simultaneously~~ LEFT



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, AK Edwards Dated: 2-16-07

DEFENDANT'S SIGNATURE: Refused

DEFENDANT'S ADDRESS: _____

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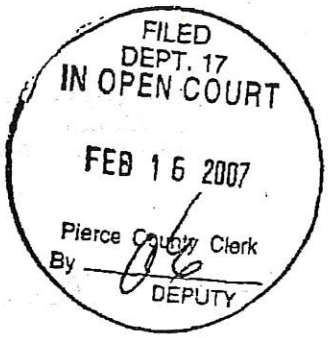

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. ADRIAN CONTRERAS-REBOLLAR, Defendant.	CAUSE NO: 06-1-01643-4 WARRANT OF COMMITMENT 1) ☐ County Jail 2) ☒ Dept. of Corrections 3) ☐ Other Custody JAN 21 2007

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[ ] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

☒ 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).

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Telephone: (253) 798-7400

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[ ] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 2.16.07

By direction of the Honorable

JUDGE
KEVIN STOCK RONALD CULPEPPER

CLERK

By: B Brighton
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

Date JAN 2 1 2007 By: B Brighton Deputy

FILED
DEPT. 17
IN OPEN COURT

FEB 16 2007

Pierce Kevin Stock Clerk
By _____ DEPUTY

STATE OF WASHINGTON
ss:
County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____, _____.

KEVIN STOCK, Clerk
By:_____ Deputy

klk

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MS. HIGH: You may have reimposed it, but without consideration of the claim. In the last PRP, it included the claim based under Mulholland. The Court does have discretion to concurrently reserve filing and as well the continuing argument about whether or not there was community custody, a point that was appropriately imposed for his offender score.

THE COURT: What was the Court of Appeals' decision on that?

MS. HIGH: That's what they remanded for.

THE COURT: What was their decision on that?

MS. HIGH: To what?

THE COURT: After the remand, what was their decision? Didn't he appeal that?

MS. HIGH: They said that the Court needs to make a finding based on sufficient facts whether or not he was on community custody. And my argument was you can't simultaneously say it was tolled and on community custody. I mean that's kind of been their argument, while it had tolled, you know, he was not participating, he absconded, and in their mind. So you can't have both.

So that was my thing, that the community custody point has not been proven other than it looked like, you know, there had been some saying: "Hey, well, he was sentenced at this date. He had three months left. Therefore, we had

a point," but without sufficient evidence from the probation officer, whoever it might be.

THE COURT: Well, we entered findings on that some time ago. We had a hearing apparently in 2010. I don't know if you were involved then.

MS. HIGH: No, I wasn't. But I did read, you know, the reason it was back then again in 2012, I believe with Mr. Whitehead, was for the Court to determine if the State produced sufficient evidence that he was on community custody.

THE COURT: So my recollection is I did determine that the State did produce sufficient evidence of that. And I would today too.

MS. HIGH: Based on?

THE COURT: Based on the evidence I had at the time. This has been some years. I don't recall all of the details, very frankly. I didn't know that was an issue today.

MS. HIGH: Well, it is because it takes us back to, you know, why we're here. And his last PRP -- that was found to be meritorious, which is why we're back was, one, the Court didn't have any jurisdiction last time we were here about a year ago and --

THE COURT: Do you have a copy of that PRP? I don't have that.

the court just right now and explained there's no Court of Appeals opinion yet; the PRP is still technically pending. And she's right. I pulled up the case events. He filed a personal restraint petition on December 17th, 2015, regarding our last appearance here where the Court found that its March 2013 J and S was valid and stood.

The State's response is due, it looks like May 2nd. They've gotten a couple of continuances. They did a motion to extend time in March, on March 1st and again on March 31st, and have an extension of time to May 2nd on that matter, and that PRP had to do with the issue that you've heard from me about when we were here in 2015. I said the Court didn't have jurisdiction when it did its 2013 sentencing. The Court didn't take that position.

And so, anyway, it looks like from what we have here. Anyway, she came down. I don't know what actually the nature of the conversations were. I do, you know, appreciate providing decisions, those kinds of things, as in, say, bench copies. I don't know what the nature of your conversations were because I wasn't present, and I think that that is the concern here, is that -- kind of the procedural posture of this case, I swear, is nine-tenths of what it is we're battling to

try and get through.

And then, of course, I do want to address some of the substantive issues. But, clearly, at least in the conversations and the argument before the Court with -- not with Ms. Miller, but first with Mr. O'Dell and then with Mr. Greer, I think have had a lot of influence on where this Court has gone and what the Court's view of the case --

THE COURT: I don't understand what you mean by that. I've listened to arguments.

MS. HIGH: That's what I mean. You followed the argument that they made. I believe their argument was wrong.

THE COURT: Which argument?

MS. HIGH: Well, first, Mr. O'Dell was clearly wrong when he argued to the Court your 2013 sentencing was valid when I argued it was not. The Court lacked jurisdiction at that time. It clearly wasn't valid.

Mr. Greer was in and saying you entered Findings of Fact and Conclusions of Law already establishing the community custody back in 2010. Well, we know in 2012 the Court came back and said it was not sufficient; they had not sufficiently proved that. So I'm just saying that the communications may be going on with

affect the standard sentencing range?

MS. MILLER: There's the one point, I believe.

THE COURT: On what's the effect?

MS. MILLER: Right.

MS. HIGH: I do have that, Your Honor.

THE COURT: Well, we can take it up if it becomes an issue.

MS. HIGH: In your 2007 J and S you had calculated him without the community custody point and so the standard ranges were on there for Count I of 120 to 160 months. At some point during, obviously, the sentencing hearing a point was added that it raised it from 129 to 171, so we're talking a high end of 160 months versus 171 months.

THE COURT: On that count.

MS. HIGH: Right. That's the highest count. Because Count II is a serious violent, it zeroed out under the SRA, and that is 93 to 123, so that doesn't change, and then the last count which I think was an Unlawful Possession of a Firearm, it went from 12 plus to 16 months.

THE COURT: That one ran concurrent with the other one.

MS. HIGH: Right, to 17 to 22 months. And

or held on a DOC warrant. So if you're on a DOC hold or sanction, that time will reduce your community custody that's owed. So, when I see those sanctions, I believe that those then get deducted.

THE COURT: Ms. Miller, does the State have any objection to setting this over one week? I'm gone Monday, Tuesday, and Wednesday next week. We'll be good next Friday afternoon.

MS. MILLER: I have no objection to that.

THE COURT: Will this be you or will this be Mr. Greer?

MS. MILLER: Well, I'm out of town next week, so I anticipate this issue will be Mr. Greer handling this.

THE COURT: I wonder if that makes things better or worse or maybe has no effect whatsoever.

MS. MILLER: Well, I think at this point the Court's scope is limited, and Ms. High and I both agree on this is an evidentiary hearing about whether the State needs to prove by a preponderance of the evidence that the defendant was in community custody at the time of the violation, so I think any of the jurisdictional issues we've already addressed today and I think Mr. Greer is now --

THE COURT: If he were not, how does that

custody. If you're on community custody, you would be getting time for each and every one of these days. You're not. Instead they say it's tolled.

So you can't say he's on community custody but it's tolled because he's not doing what he's supposed to do. So, I mean, either way; it's either they're saying he wasn't doing what he's supposed to do and therefore it tolled and that's why it kept dragging along behind him, and I'd say no, if something is tolled, that means you're not on community custody; you're not doing what you need to do. Community custody may pop up down the road, but while this event is going on, if you want to call it tolled, it can't mean that you're simultaneously on it and yet it's being tolled. If it's tolled, you're not doing it.

But here as well what we have is the finding that -- I think we can make a finding that the documents provided by Department of Corrections is the State's burden. None of them match up with anything. As you can see, each time you get a document, it's inconsistent with the document before. That doesn't match the Chronos. The Chronos doesn't match LINX. Their obligation is to prove it by a preponderance of the evidence. We know that those documents are not accurate, and I don't think you can make a finding that

he's on community custody.

I mean, one of the things that just seems to be the block is a person is on community custody even if the court is saying their time has -- you know, even if you say the Chronos show, I think we're tolling it at this time.

THE COURT: Well, when you toll, you aren't really on it. You're supposed to be on it, but you have absconded or failed to do something you're required to, so you're not really on it although you're supposed to be. That's why they add the additional time. You don't get a benefit for not following through.

MS. HIGH: Right.

THE COURT: I was going to ask Ms. Miller, as the author of the most recent chart.

MR. GREER: Judge, can I quickly address this?

THE COURT: You can, yes.

MR. GREER: And Ms. Miller is going to address that. So you asked earlier if we agreed with the defense, and we don't. The Chronos are something different than what is the accurate calculation of the defendant's community custody time period and the tolling. The Findings of Fact that I submitted are the